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March 17, 2004

VIA HAND DELIVERY

Hon. Kim Beals, Pre-Arbitration Officer
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN. 37238

Re: Docket Nos. 00-00523, 03-00585, 03-00586, 03-00587, 03-00588, 03-00589

Dear Ms. Beals:

Enclosed please find two originals and fourteen copies of the "Reply of Rural Coalition" to be filed in each of the above-referenced proceedings.

Copies of the "Preliminary Motion To Dismiss Or, In The Alternative, To Add An Indispensable Party" are being provided to each of the parties, as indicated on the attached Certificate of Service. Please direct any questions regarding this filing to me at your convenience

Sincerely yours,



William T. Ramsey

cc Hon Ron Jones, Director

**BEFORE THE
TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:

Petition of Cellco Partnership d/b/a Verizon Wireless for)	Consolidated Docket
Arbitration under the Telecommunications Act)	No. 03-00585
)	
Generic Docket Addressing Rural Universal Service)	Docket No. 00-00523

**REPLY OF
THE RURAL COALITION**

on behalf of
Ardmore Telephone Company, Inc.
Ben Lomand Rural Telephone Cooperative, Inc.
Bledsoe Telephone Cooperative
CenturyTel of Adamsville, Inc.
CenturyTel of Claiborne, Inc.
CenturyTel of Ooltewah-Collegedale, Inc.
Concord Telephone Exchange, Inc.
Crockett Telephone Company, Inc.
DeKalb Telephone Cooperative, Inc.
Highland Telephone Cooperative, Inc.
Humphreys County Telephone Company
Loretto Telephone Company, Inc.
Millington Telephone Company
North Central Telephone Cooperative, Inc.
Peoples Telephone Company
Tellico Telephone Company, Inc.
Tennessee Telephone Company
Twin Lakes Telephone Cooperative Corporation
United Telephone Company
West Tennessee Telephone Company, Inc.
Yorkville Telephone Cooperative

March 17, 2004

REPLY OF THE RURAL COALITION

The Rural Coalition of Small Local Exchange Carriers and Cooperatives (hereafter referred to be referred to as the “Coalition” or “rural Independents”) respectfully submits this Reply to the Responses of the CMRS Providers (the “CMRS Providers’ Response”) and BellSouth Telecommunications, Inc. (the “BellSouth Response”) to the “Rural Coalition of Small LECs and Cooperatives’ Preliminary Motion To Dismiss Or, In The Alternative, To Add An Indispensable Party” (the “Coalition Motion”).

INTRODUCTION AND BACKGROUND

In both the “Coalition Motion” and the “Response of the Rural Coalition” (the “Coalition Response” filed on December 1, 2003 in this proceeding), the Coalition addressed two preliminary and fundamental matters:

- 1) **The fact that the CMRS providers focused both their negotiations and their arbitration petitions in an effort to impose interconnection conditions that are not consistent with established interconnection standards and related rules and regulations. In fact, as discussed in both the Coalition Motion and the Coalition Response, and as recognized by the CMRS providers in an *ex parte* before the Federal Communications Commission (the “FCC”), many of the issues raised by the arbitration petitions are the subject of pending FCC proceedings.**
- 2) **The CMRS Providers do not seek a new network arrangement to terminate traffic to the rural Independents. They seek the establishment of new terms and conditions applicable to the existing terminating traffic arrangement whereby each CMRS carrier delivers traffic to BellSouth which, in turn, terminates the traffic through the long-existing physical interconnection established between BellSouth and each rural Independent. The Coalition, in both the Coalition Motion and the Coalition Response, set for the specific issues that must be addressed and resolved in order to establish new terms and conditions applicable to the existing terminating arrangement that the CMRS providers utilize. These issues cannot be resolved in the absence of BellSouth.**

Accordingly, the Coalition requested that the TRA dismiss the arbitration and, instead, utilize alternative dispute resolution to resolve all issues among all parties (including BellSouth)

that are associated with the establishment of new terms and conditions applicable to the existing indirect interconnection of the CMRS Providers to the rural Independents through the BellSouth network.¹

I. The Coalition Seeks Resolution of the Issues in a Manner Consistent with Established Statutory Requirements and Rules Prescribed by the FCC.

Both the CMRS Providers and BellSouth complain that the Coalition is trying to “stop the process.”² To the contrary, the purpose of both the Coalition Motion and the Coalition Response is to seek resolution of the issues that surround the establishment of new terms and conditions applicable to the indirect interconnection of the CMRS providers to the rural Independents through the BellSouth network. The Coalition has not suggested that the TRA dismiss the arbitration and maintain the *status quo* in perpetuity, as the CMRS Providers and BellSouth wrongly suggest.³

The CMRS Providers and BellSouth mischaracterize the Coalition Motion. They assert (often without any support whatsoever) that the Coalition has taken positions it has not taken and has mad arguments that it has not made. The Coalition respectfully asks that these inaccurate characterizations not be permitted to misdirect the focus from the very specific and legitimate issues raised by the Coalition Motion and the Coalition Response.

¹ See, Coalition Motion, p 6, Coalition Response, pp 13-15, and 98

² See e g , CMRS Providers’ Response at p 4; BellSouth Response at p 5

³ See, CMRS Providers’ Response, p. 7, BellSouth Response at fn 3

A. The Coalition has not, and does not, oppose arbitrating interconnection in accordance with established statutory requirements and regulations prescribed by the FCC.

Both the CMRS Providers and BellSouth wrongly contend that the Coalition has reversed its prior position and now argues that a Section 252 arbitration is inappropriate.⁴ The CMRS Providers and BellSouth are incorrect. The rural Independents did not and do not object to participation in a Section 252 arbitration proceeding. Agreement to participate in an arbitration proceeding in accordance with statutory requirements and FCC regulation, however, should not be confused with agreement to voluntarily arbitrate the imposition of terms and conditions sought by the CMRS Providers, where the terms and conditions are not subject to statutory requirement or FCC regulations.

Both the CMRS Providers and BellSouth wrongly characterize the Coalition Motion as an attempt to walk away from a prior commitment to arbitrate the open issues in this proceeding. The fact is, however, that the Coalition has participated in good faith negotiations and in this arbitration process. The Coalition did not and will not waive the rights of its members to request dismissal of the arbitration issues raised by the CMRS providers to the extent the CMRS providers would seek to impose interconnection conditions that go beyond the requirements of statute and FCC regulation. At every step in the negotiations, the Coalition has reserved its rights in this regard. The rural Independents have attempted to negotiate terms and conditions to settle the issues in this proceeding. The Coalition's voluntary negotiation of terms "without regard to the standards set forth in subsections (b) and (c) of section 251" was undertaken in good faith and consistent with Section 252(a)(1) of the Act.⁵ The Coalition did not agree to voluntarily arbitrate the resolution of issues that are outside of the established interconnection

⁴ CMRS Providers' Response, pp 3-5; BellSouth Response, pp. 4-5

⁵ 47 U.S.C. §252(a)(1)

requirements, and thereby outside of the statutory standard for arbitration.⁶

As if the Coalition had argued that it will not arbitrate, the CMRS Providers and BellSouth each point to the comments of the Coalition's Counsel at the April 22, 2003 Status Conference in Docket No. 00-00523 to support their contention that the Coalition members agreed to arbitrate.⁷ No need exists for either BellSouth or the CMRS Providers to argue against an argument that the Coalition has not made. The issue is not whether the Coalition will arbitrate. The threshold matter raised by the Coalition Motion is whether the issues raised by the arbitration petitions of the CMRS providers should be dismissed because they attempt to impose interconnection conditions that exceed established statutory and FCC requirements.

The Coalition respectfully submits that it will serve the mutual interests of all parties to dismiss the arbitration issues raised by the CMRS Providers that attempt to impose conditions beyond the established requirements. Pursuant to the standards of arbitration set forth in section 252(c) of the Act, the only lawful outcome is the eventual rejection of the terms proposed by the CMRS Providers that exceed the existing requirements. Contrary to the claims of the CMRS Providers and BellSouth, the Coalition has not argued explicitly or implicitly to leave the issues in "limbo." Instead, the Coalition has respectfully proposed an alternative dispute resolution.⁸

The rural Independents are not reluctant to arbitrate Section 251(a) and (b) interconnection requirements with the CMRS providers in accordance with the standards

⁶ See, 47 U.S.C. §252(c)

⁷ CMRS Providers' Response, p 4; BellSouth Response, p 4. It is interesting to note that the CMRS Providers extract the comments of the Coalition's counsel out of context, and omit the prefatory comment in which the Coalition acknowledges that "any wireless carrier has every right to, under the rules that exist, establish an interconnection point with the independents and seek transport and termination under Section 251(b)(5) of the Telecommunications Act. As described briefly below in Section I B, and more extensively in the Coalition Response, the CMRS carriers did not want to establish an interconnection point with the Independents. Although the CMRS Providers omit this aspect of the remarks of the Coalition Counsel at the April 22, 2003, Status Conference, the full remarks reflect the consistent willingness of the Coalition members to negotiate and arbitrate under the rules that exist. The Coalition never agreed or indicated that issues beyond the existing rules – issues in fact pending at the FCC – should be subject to Section 252 arbitration.

⁸ See, Coalition Response, pp. 13-15

established pursuant to Section 252(c) of the Telecommunications Act. The CMRS Providers, however, are attempting to utilize the arbitration process to impose terms and conditions that are not the subject of statutory requirements or FCC regulation. The CMRS Providers wrongly claim that they “merely seek, in simplified terms, reciprocal compensation and interconnection agreements with members of the Coalition for direct and indirect interconnection in accordance with Sections 251 and 252 of the Act.”⁹

B. No party has refuted the fact that the terms and conditions the CMRS Providers seek to impose exceed established requirements and are the very subject of pending FCC Proceedings.

The CMRS Providers state that the “central areas of dispute in these consolidated proceedings are what the appropriate compensation rate is and to what traffic it will be applied.”¹⁰ What the CMRS Providers seek, however, goes far beyond the statutory requirements of the Act and the associated FCC regulations.

For example, the CMRS Providers seek to apply the reciprocal compensation requirements of 47 U.S.C. §251(b)(5) to traffic terminated indirectly by a CMRS provider to an Independent through an established BellSouth intraLATA toll trunk.¹¹ The FCC regulations prescribed pursuant to §251(b)(5), however, specifically contemplate that reciprocal compensation for transport and termination of traffic exchanged by two carriers is available “from the interconnection point between the two carriers.”¹² Where a carrier elects to terminate

⁹ CMRS Providers’ Response, p 11

¹⁰ *Id*

¹¹ See, CMRS Arbitration Issue 2. Although the CMRS Providers included “direct interconnection” in their arbitration Petitions (CMRS Issues 7, 14 and 15), the CMRS Providers did not choose to discuss “direct interconnection” within the scope of the collective negotiations. The Coalition respectfully notes that it may not be useful to utilize collective negotiations among multiple parties to address the specifics involved in the establishment of points of interconnection and reciprocal compensations arrangements in accordance with the FCC’s Subpart H Rules

¹² 47 C F R §51 701(c) See, also Coalition Response pp 21-30

traffic to a rural Independent, or any carrier, through a Section 251(a) indirect interconnection arrangement, there is no “interconnection point between the two carriers” and the requirements of the FCC’s rules do not apply.¹³

Another example of the manner in which the CMRS Providers attempt to utilize the arbitration process to impose conditions that are not established by statute or regulation is demonstrated by the issues the CMRS Providers raise regarding landline originated traffic¹⁴ The CMRS Providers want the TRA to impose non-existent requirements on the rural Independents and dictate the manner in which they direct traffic originated on the landline network and destined to a CMRS network. Several of the CMRS Providers have advocated that the FCC declare as interconnection requirements the very conditions that they seek to impose on the rural Independents.¹⁵ Apparently not content to wait for the outcome of the pending proceedings at the FCC, the CMRS carriers seek an inappropriate opportunity in the arbitration proceeding to convince the TRA to impose these conditions irrespective of the fact that they are not requirements established by statute or FCC regulation. These are requirements the CMRS carriers are seeking to impose in the pending FCC proceedings. Obviously, the interconnections the CMRS carriers are seeking before the FCC are not now required by the FCC.

Throughout their response, the CMRS Providers do not attempt to refute the fact that the terms and conditions they seek to impose on the rural Independents exceed established requirements. The CMRS Providers do not even acknowledge the existence of the pending

¹³ In fact, the conditions the CMRS Providers want the TRA to impose not only are beyond existing statutory requirements and FCC regulations, but they are the subject of pending FCC proceedings (*See, e g* , Coalition Response p 9 at fn. 8 and Coalition Motion pp 7-8)

¹⁴ *See, e g* , CMRS Issue 2b, 5, and 12 The Coalition Response thoroughly addresses each CMRS Issue and describes in detail how the terms and conditions the CMRS Providers seek to impose are not consistent with established statutory requirements or FCC regulation.

¹⁵ *See*, fn 10

issues in FCC Docket 01-92, their participation in that FCC proceeding, or their attempts in that proceeding to obtain a declaration from the FCC that the conditions they seek to impose here are required. The CMRS Providers, instead, skirt these facts by stating “Every issue raised by the CMRS Providers, save for the limited state contract issues in the Joint Matrix, arises under existing FCC regulations or the Act itself.”¹⁶ An issue that “arises” under the statute and regulations is not an established requirement under the statute and regulations.

Once again, the CMRS Providers have created “straw men” and countered arguments that the Coalition has not made and has no need to make. The Coalition does not dispute that the issues “arise” under the Act. The Coalition, however, does contend that, in accordance with the Act, the resolution of the policy issues and the establishment of interconnection requirements is subject to FCC regulation and not an arbitration proceeding. The CMRS Providers incorrectly suggest that the parties “simply disagree about what the regulations and/or the Act requires, and these disputes are precisely within the statutory authority vested by Section 252(c) of the Act to the TRA.” The CMRS Providers are incorrect. The issue is not one of “simple” disagreement of interpretation between the CMRS Providers and the rural Independents – such disagreements are certainly left to the TRA to decide. While this might be the case under other circumstances where interconnection requirements are established, it is not the case in this instance where the very conditions that the CMRS Providers seek to impose are the subject of pending consideration in proceedings before the FCC.

Instead of addressing the specific arguments set forth in the Coalition Response,¹⁷ the CMRS Providers focus on a non-issue. The CMRS Providers suggest that the “requirements for indirect interconnection” is an example of the disagreement of the parties with respect to the

¹⁶ CMRS Providers’ Response, p 6

¹⁷ See, e.g., Coalition Response, CMRS Issues 1, 2, 2b, 3, 4, 5, 6, and 12

requirements of the Act. The CMRS Providers state that “[t]he Coalition disagrees” with the fact that “both the Act and FCC regulations require the Coalition to provide indirect interconnection.”¹⁸ The CMRS Providers wrongly attribute this position to the rural Independents in the absence of any citation or reference. No citation or reference exists because the Coalition has never suggested that rural Independents are not required to interconnect indirectly to other carriers.

In fact, rural Independents connected “indirectly” to other carriers long before the passage of the 1996 Telecommunications Act and the adoption of Section 251(a).¹⁹ The rural Independents have long provided the CMRS Providers with indirect interconnection through BellSouth pursuant to precisely that physical indirect interconnection arrangement that is the subject of this proceeding. There is no basis for the assertion of the CMRS Providers that the Coalition “disagrees” that rural Independents are required to connect indirectly. Once again, the CMRS Providers avoid the real issue by focusing on a non-issue. The real issue raised by the dispute over what new terms and conditions are applicable to the existing interconnection arrangement through BellSouth is what standards and requirements apply to that specific arrangement. The fact is that no standards or requirements exist that require the rural Independents to accept the terms and conditions that the CMRS Providers seek to impose. The CMRS Providers have offered not a single citation or reference to any such requirements or standards because no such citation or reference exists, other than the references in the record in FCC Docket 01-92 which demonstrate that these matters are pending before the FCC.

¹⁸ CMRS Providers’ Response, p 7

¹⁹ 47 U S C §251 (a)

C. The cases cited by the CMRS Providers support the position of the Coalition: the resolution of open issues must be in accordance with established statutory requirements and FCC regulations.

The CMRS providers cite Section 252(b) of the Act as support for their statement that the “Act requires the TRA to arbitrate ‘any open issues’.”²⁰ The CMRS Providers left out an important part of the Act. The Act states that “The State commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) upon the parties to the agreement . . .”²¹ The reference to “subsection (c)” is the “Standards for Arbitration” which require that the “conditions meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251.”²² The CMRS Providers, however, do not want the TRA to apply the existing requirements because no requirements exist for the conditions they seek to impose on the rural Independent. The appropriate resolution of the “open issues” in accordance with the existing requirements is the dismissal of the CMRS Issues that seek to impose non-existent requirements.²³

The CMRS Providers, nonetheless, hope to convince the TRA to establish new interconnection policy requirements within the arbitration proceeding. In support of their position, the CMRS Providers argue that “[v]arious Circuit Courts of Appeal that have reviewed state arbitration decisions have established a two-tiered standard for questions decided pursuant to the Act and for questions decided pursuant to *state law*.” (footnote omitted).²⁴ On the basis of

²⁰ CMRS Providers’ Response, p 5 citing 47 U.S.C. §252 (b).

²¹ 47 U.S.C. §252 (b)(4)(C)

²² 47 U.S.C. §252 (c)

²³ Because these issues are those that the CMRS Providers have correctly characterized as “central areas of dispute” (CMRS Providers’ Response, p 11), the Coalition has respectfully proposed that subsequent to the dismissal of these issues, the arbitration proceeding should be referred back to Docket 00-523, and that all parties, including BellSouth, should participate in alternative dispute resolution similar to that which has taken place in other States where CMRS carriers interconnect indirectly to rural telephone companies through BellSouth

²⁴ CMRS Providers’ Response, p 5

these cases, the CMRS Providers once more argue against a position that the Coalition has not taken. The CMRS Providers suggest that the Coalition believes that “all state law questions would be beyond the purview of a Section 252 arbitration.”²⁵ That is not the position of the Coalition. The Coalition does not dispute that the TRA may resolve all state law issues in accordance with state law. The Coalition does, however, dispute any suggestion that the Section 251 interconnection issues can be resolved in any way other than in accordance with existing statutory and FCC requirements. Those requirements are set forth in the standards for arbitration set forth in Section 252(c) of the Act. The decisions of the Courts of Appeals cited by the CMRS Providers support the position of the Coalition:

Those courts have held that the federal judiciary should first review *de novo* whether a state public service commission’s orders comply with the requirements of the Telecommunications Act.²⁶

In an attempt to bolster their contention, the CMRS providers also point to two state arbitration decisions, one in Iowa and the other in Oklahoma. The CMRS Providers apparently hope that the TRA will elect to follow the course laid out in these two states irrespective of the Section 252(c) statutory standard.²⁷ Neither the Coalition member company representatives nor Coalition Counsel participated in either of these state proceedings. The CMRS providers do not indicate whether the rural Independent company participants in these proceedings voluntarily submitted all issues to arbitration or whether they objected to the arbitration of issues that address the imposition of interconnection conditions beyond the scope of established statutory and FCC requirements.

The CMRS Providers also attach a March 5, 2004, Order issued by the United States

²⁵ CMRS Providers’ Response, p. 6

²⁶ Michigan Bell Telephone Company v. MFS Intelenet of Michigan, Inc., 339 F.3d 428 at 433 (6th Cir. 2003)

²⁷ CMRS Providers’ Response, pp. 7-8

District Court for the Western District of Oklahoma which upholds the arbitration decision of the Oklahoma Corporation Commission. The CMRS Providers state that the “issues in that case were virtually identical to the issues raised in this proceeding.”²⁸ A review of the District Court Order, however, does not indicate that the Court addressed the fact that the interconnection conditions imposed by the Oklahoma Corporation Commission exceed the established statutory requirements and FCC regulations. Nor does this Order address the fact that the imposed interconnection conditions are the subject of pending FCC consideration. The Coalition does not know whether these facts were or were not raised before the District Court. Nor does the Coalition know if these facts were raised, but ignored in error. Contrary to the urging of the Authority by the CMRS Providers to follow the course of two other state commissions, the Coalition respectfully suggests that the facts and circumstances of those proceedings are not before the TRA or relevant to this proceeding.

The CMRS Providers claim that the “clearest repudiation” of the position of the Coalition position is found in an FCC arbitration decision, In re: Petition of WorldCom, Inc., 17 FCC Rcd. 27 (July 17, 2002) (the “Virginia Arbitration Order”).²⁹ The CMRS Providers rely on paragraph 3 of this decision to support their claim that a state regulatory authority can determine interconnection requirements within an arbitration proceeding when the issues are pending before the FCC.³⁰

A review of the Virginia Arbitration Order, however, further demonstrates that the FCC actually rejected the position of the CMRS Providers. In fact, the very paragraph of the Virginia Arbitration Order quoted by the CMRS Providers reiterates the requirement of Section

²⁸ CMRS Providers’ Response, p 7 Again, neither the Coalition member company representatives nor Coalition Counsel participated in this litigation

²⁹ CMRS Providers’ Response, p 8

252(b)(4)(C).³¹ The CMRS Providers conveniently omitted the last sentence of paragraph 3 of the Virginia Arbitration Order:

Accordingly, in addressing the issues that the parties have presented for arbitration – the only issues that we decide in this order – we apply current Commission rules and precedents, with the goal of providing the parties, to the fullest extent possible, with answers to the questions that they have raised.³²

The FCC also notes in the Virginia Arbitration Order that “Section 252(c) sets forth the standard of review to be used in arbitration by the Commission and state commissions in resolving any open issue and imposing conditions upon the parties in the interconnection agreement.”³³

The Coalition maintains that both the CMRS Providers and the Coalition were free to negotiate voluntarily to reach mutually acceptable terms and conditions irrespective of the established requirements of Section 251 of the Act and FCC regulations. The Coalition negotiated in good faith, but agreement was not reached. In this arbitration, resolution of the open issues is not subject to the imposition of terms and conditions that exceed the existing established requirements. In the Virginia Arbitration Order, the FCC addresses this very circumstance in speaking to the rights of the parties to an arbitration:

Similarly, they may agree to terms that are not compelled by, or are even inconsistent with, sections 251(b) and (c) of the Act. However, if the parties have not reached such an understanding and have asked the Commission to arbitrate their dispute, we will do so based on existing law and expect that any change in that law will be reflected in the contract.³⁴

The Virginia Arbitration, relied so heavily upon by the CMRS Providers, supports the Coalition Motion. The CMRS carriers are fully aware that the terms and conditions they seek to

³⁰ *Id* , p, 9

³¹ *See*, p 10 at fn 21, *infra*.

³² Virginia Arbitration Order, para 3 (underscoring added)

³³ *Id* , at para. 29

³⁴ *Id* , at para 34 (Underscoring added)

impose on the rural Independents are not existing interconnection requirements, and that their proposed terms and conditions are the subject of pending FCC proceedings. Consistent with the existing law, the Authority may resolve the “open issues” raised by the CMRS Providers through dismissal because the terms that the CMRS Providers seek exceed established statutory and FCC requirements. Accordingly, the Authority should grant the Coalition Motion.

II. BellSouth is an indispensable party to any proceeding establishing new terms and conditions applicable to the existing indirect interconnection of the CMRS Providers to the Rural Independents.

The Coalition has thoroughly and specifically identified a multitude of issues in this proceeding that cannot be resolved in the absence of BellSouth.³⁵ In the Coalition Motion, the Coalition noted that the Authority’s own rules provide that “failure to join an indispensable party” is a defense to a complaint or petition in a contested case. TRA Rule 1220-1-2-.03. The Coalition also supported its Motion to join BellSouth by reference to Rule 19.01 of the Tennessee Rules of Civil Procedure. This Rule requires joinder of a party whose absence would “leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reasons of the claimed interest.” The rural Independents respectfully submit that BellSouth’s participation in this proceeding is very much required to ensure both that all issues can be resolved, and that the rural Independents do not

³⁵ “The ICOs respectively maintain that no reasonable authority would require a carrier to accept physical interconnection with another carrier in the absence that these and other basic responsibilities are maintained by BellSouth or any similarly situated “transit” provider including, but not limited to (a) establishment of trunking facilities and a physical interconnection point with the ICOs, (b) responsibility to establish proper authority for either BellSouth or the ICOs to deliver traffic of third parties to the other, (c) responsibility not to abuse the scope of traffic authorized by the arrangement (*i e*, the transmission of unauthorized traffic), (d) provision of complete and accurate usage records, (e) coordination of billing and collection and compensation (as discussed above in the previous issue), (f) responsibilities to resolve disputes that will necessarily involve issues where the factual information is in the possession of BellSouth (*e g*, how much traffic was transmitted, and which carrier originated the traffic), (g) responsibilities to act to implement network changes which alter or terminate the voluntary arrangement between the ICOs and BellSouth, (h) responsibilities to coordinate appropriate actions in the event of default and non-payment by a carrier transiting traffic through BellSouth. The ICOs do not suggest that this list is exhaustive, this list, however, demonstrates the factual reality that a “transit” agreement will not and cannot work in the absence of established terms and conditions regarding the responsibilities and obligations of the transit carrier to the terminating carrier.” See, Coalition Response at pp 42-43, Coalition Motion, p 11

incur multiple or inconsistent obligations.

In response to the Coalition Motion to add BellSouth as an indispensable party, BellSouth and the CMRS Providers fail to address either the substantive issues raised by the Coalition or the applicable state law. Instead, and most ironically, both the CMRS Providers and BellSouth argue that the Telecommunications Act does not establish a “process to negotiate/arbitrate 3-way agreements.”³⁶ The irony is the fact that both parties recognize that neither the Act nor FCC regulations have established standards or requirements applicable to the negotiation of indirect interconnection arrangements. The CMRS Providers and BellSouth fail to recognize this fact in the context of their intent to impose non-existent Section 251 requirements on the rural Independents.³⁷ Yet, they apply this fact in their opposition to the joinder of BellSouth where the argument is inapposite.

As the CMRS Providers have recognized, those matters raised in an arbitration that are not the subject of Section 251 requirements may be resolved by the state regulatory authority pursuant to *state law*. The fact that the Act does not address who should be the parties to an indirect interconnection negotiation and arbitration does not preclude the application of state law regarding joinder of parties.³⁸

Neither BellSouth nor the CMRS Providers address the applicable state law set forth in TRA Rule 1220-1-2-.03 and Rule 19.01 of the Tennessee Rules of Civil Procedure. Instead,

³⁶ CMRS Providers’ Response, p. 9. *See also*, BellSouth Response, p. 10

³⁷ Section I, *infra*

³⁸ The Coalition respectfully suggests that the absence of any reference in the Act or FCC regulations to the requirements and standards for an indirect interconnection arrangement is indicative of the fact that neither the Act nor the FCC contemplated the establishment of terms and conditions sought by the CMRS Providers with respect to the existing indirect physical interconnection arrangement. There is no basis to suggest that either the Act or the FCC would silently override state law and basic common law principles regarding joinder of parties. It is far more likely that the Act and the FCC contemplate that an indirect interconnection arrangement would involve one agreement between the originating carrier and the intermediary carrier, and a second agreement between the intermediary carrier and the terminating carrier. This is precisely the current framework that governs the already existing indirect interconnection of the CMRS Providers to the rural Independent networks through BellSouth

both parties misplace their focus and reliance on TRA Rule 1220-1-3-.10.³⁹ This rule, however, addresses “petitions for intervention,” and not the joinder of an indispensable party. Similarly off the mark is the reliance of BellSouth and the CMRS Providers on a September 11, 1996, TRA Order in Docket No. 96-01152 in which the Authority denied the petition of the Consumer Advocate to intervene in an interconnection arbitration.

That Order addressed the intervention of the Consumer Advocate. It did not address a request to join a necessary party involved in an interconnection arrangement. In Docket No. 96-01152, the Consumer Advocate sought to intervene in a negotiation and arbitration process to convene a contested case in order to protect its interests. In denying intervention, the TRA concluded that the Consumer Advocate’s interests could “be protected at the proper time (which may include at the time any completed interconnection agreement between BellSouth and AT&T is submitted for approval).”

The circumstances here are far different. Neither “intervention” nor TRA Rule 1220-1-3-.10 is relevant. BellSouth clearly does not seek to intervene in this proceeding. BellSouth is one of the three telecommunications carriers involved in the existing indirect interconnection arrangement. The CMRS Providers seek to establish new terms and conditions applicable to this three-way indirect interconnection, and the Coalition has identified specific related issues that cannot be resolved in the absence of BellSouth. The Coalition respectfully submits that, consistent with applicable state law, BellSouth is an indispensable party to this proceeding. If BellSouth not added to this proceeding, the petitions must, in accordance with Tennessee law, be dismissed.⁴⁰

³⁹ CMRS Providers’ Response, p 10, BellSouth Response, p 6

⁴⁰ Both BellSouth and the CMRS Providers reference existing interconnection agreements and suggest that a

III. The Coalition Motion is timely and should be granted.

The CMRS Providers and BellSouth, having failed to rebut the Coalition Motion on the basis of the applicable facts and law, attempt to obtain dismissal of the Motion on the basis that it is “untimely.”⁴¹ The CMRS Providers stridently argue that the Coalition should have raised the Coalition Motion issues in the Coalition Response to the arbitration petitions.⁴² That is precisely what the Coalition did⁴³

The CMRS Providers ignore this fact and dig in deeper, chiding the Coalition for not previously moving to dismiss pursuant to TRA Rule 1220-1-2.03 and Rule 12.02 of the Tennessee Rules of Civil Procedure. The Coalition did, however set forth a prayer for relief in the December 1, 2003, Coalition Response to the arbitration petitions:

Consistent with this Response, the ICOs respectfully request that the Tennessee Regulatory Authority:

- **confine this proceeding to consideration of the so-called “meet-point billing” “transit traffic” issues which led to the Pre-Hearing Officer’s requirement of collective negotiations; prior to expending further resources, the ICOs respectfully urge the TRA to consider the utilization of alternative dispute resolution means, recognizing the fact that: 1) the FCC has not established standards and rules applicable to indirect “transit” arrangements; and 2) many of the associated issues are currently before the FCC.**
- **require BellSouth to become a party to this proceeding in order to address comprehensively the issues raised in the context of three-party interconnection arrangements.**⁴⁴

rural Independent and a CMRS Provider may enter into two-party indirect interconnection agreements without requiring the intermediary party to be a party (CMRS Providers’ Response, p 11, BellSouth Response, p 3) The fact that two parties may enter such a two-party agreement voluntarily does not establish a requirement that a party must do so involuntarily

⁴¹ CMRS Providers’ Response, pp 12-13; BellSouth Response, p 5

⁴² CMRS Providers’ Response, p 12

⁴³ See, e g , Coalition Response, Section I, pp 3-15 Throughout the entire Coalition Response, specific references are made to 1) CMRS Issues that should be dismissed because they propose non-existent interconnection requirements, and 2) issues that require the participation of BellSouth.

⁴⁴ Coalition Response, p 98 The Coalition respectfully notes that an arbitration procedure combines the procedural requirements of Section 252 of the Act with applicable state procedural requirements Cognizant of all

Having first set forth its request for relief in the Coalition Response filed on December 1, 2003, the Coalition reiterated its request in the Coalition Motion filed in accordance with the procedural schedule established by the Pre-Hearing Officer. The Coalition has sought relief on a timely basis, and supported its request on the basis of irrefutable law and fact.

CONCLUSION

The Coalition does not seek to avoid an arbitration of new terms and conditions for interconnection of CMRS providers to the rural Independent networks if such terms and conditions are established on the basis of statutory and regulatory requirements consistent with the standards of arbitration set forth in Section 252 of the Act. The terms and conditions sought by the CMRS Providers, however, are not consistent with these requirements. Dismissal is the appropriate resolution of the “open issues” the CMRS Providers have raised.

Moreover, the Coalition has not sought to avoid the orderly establishment of lawful new terms and conditions applicable to the existing indirect interconnection of the CMRS Providers to the rural Independents through BellSouth. The Coalition respectfully maintains that the lawful and orderly establishment of new terms and conditions precludes the “self-help” actions of BellSouth that are the subject of a pending petition in Docket 00-523.⁴⁵ The Coalition respectfully submits that new terms and conditions among all of the carriers participating in the indirect interconnection arrangement (including BellSouth) may be reached through alternative dispute resolution under the auspices of the Authority in a manner similar to those agreements

of these requirements, the Coalition incorporated the relief it seeks in the Coalition Motion into the Coalition Response, anticipating the procedural argument now incorrectly raised by the CMRS Providers. The Coalition also expected that the Authority would assign the arbitration proceedings to a Pre-Hearing Officer, as it has done, and that the Pre-Hearing Officer would establish a schedule that included an opportunity to file a preliminary motion, as the parties subsequently agreed.

⁴⁵ In this regard, the Coalition respectfully notes that BellSouth has utilized the opportunity presented to respond to the Coalition Motion in this proceeding as an additional opportunity to respond further to the recent March 8, 2004 Coalition Reply Brief addressing the Coalition Petition pending in Docket No. 00-523. This aspect of the BellSouth Response is not pertinent to the Coalition Motion in this proceeding. The Coalition will reserve its rights to respond appropriately in Docket No. 00-523.

reached in several other states where the CMRS Providers utilize an indirect interconnection to the networks of rural telephone companies through BellSouth. The Coalition respectfully proposes that after the dismissal of the Section 252 arbitration petitions, the unresolved matters should be referred to the Hearing Officer in Docket No. 00-00523 (the proceeding in which the underlying issues arose) wherein all parties may have the opportunity to participate in alternative dispute resolution and establish new terms and conditions applicable to the existing indirect interconnection arrangement. In the alternative, if BellSouth is not made a party to these proceedings, the arbitration petitions must be dismissed.

Respectfully submitted,

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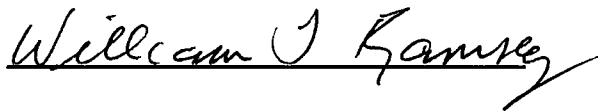
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